

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BILL WISSER,

Plaintiff,

- against -

ZAGAT, INC.

Defendant.

Docket No. 1:17-cv-4213

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Bill Wisser (“Wisser” or “Plaintiff”), by and through his undersigned counsel, as and for his Complaint against Defendant Zagat, Inc. (“Zagat” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted photograph of chef and restaurant owner Francisco Anton, owned and registered by Wisser, a Florida-based photojournalist. Accordingly, Wisser seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or is transacting business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Wisser is a professional photojournalist having a usual place of business at 565 NW 44th Street, Miami, Florida 33127.

6. Upon information and belief, Zagat is a domestic corporation duly organized and existing under the laws of the State of Delaware, with a place of business at 76 9th Avenue, 4th fl., New York, New York 10011. At all times material hereto, Zagat has owned and operated a website at the URL: www.zagat.com (the “Website”).

STATEMENT OF FACTS

A. Background and Plaintiff’s Ownership of the Photograph

7. Wisser photographed chef and restaurant owner Francisco Anton (the “Photograph”). A true and correct copy of the Photograph is attached hereto as Exhibit A.

8. Wisser is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

9. The Photograph has a pending U.S. Copyright Office number of 1-5319098368. See Exhibit B.

10. The Photograph was deposited and the fee was paid to the U.S. Copyright Office.

B. Defendant’s Infringing Activities

11. Upon information and belief, on or about December 5, 2016, Zagat ran an article on the Website entitled *8 Under-the-Radar Chefs to Know in Miami*. See <https://zagat.com/b/miami/8-under-the-radar-chefs-in-miami>. The article prominently featured the Photograph. A true and correct copy of the article is attached hereto as Exhibit D.

12. Zagat did not license the Photograph from Plaintiff for its article, nor did Zagat have Plaintiff’s permission or consent to publish the Photograph on its Website.

CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST ZAGAT)
(17 U.S.C. §§ 106, 501)

13. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-12 above.

14. Zagat infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on its Website. Zagat is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photograph.

15. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

16. Upon information and belief, the foregoing acts of infringement by Zagat have been willful, intentional, and purposeful, in disregard of and with indifference to Plaintiff's rights.

17. As a result of Defendant's infringement of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to recover his damages and Defendant's profits pursuant to 17 U.S.C. § 504(b).

18. Defendant's conduct, described above, is causing, and unless enjoined and restrained by this Court, will continue to cause Plaintiff irreparable injury that cannot be fully compensated by or measured in money damages. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Zagat be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;

2. That Plaintiff be awarded Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded pre-judgment interest; and
5. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
June 5, 2017

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